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The Great Paradox of Defence: Political Economy and Defence Procurement in Post-Brexit United Kingdom

Matt Uttley and Benedict Wilkinson

Introduction

At the heart of defence procurement lies a great paradox. At its simplest, the dilemma is a consequence of the tension between national 'sovereignty': an imperative to secure the supply of defence equipment and through this to realise the national security, economic and political benefits, and integration: the imperative for states to share the enormous costs of defence equipment production and procurement with other partners. The tension between these two imperatives is one of the intractable dilemmas that officials and politicians struggle with, and that academics and theorists scrutinise and explore. It is also one of the core themes that run not only through this volume, but through the wider body of literature examining the political economy of defence.¹

For policymakers, the tensions are manifest in a series of choices and trade-offs that have serious security and economic implications. Sharing the development of a

References and notes

¹ See, for example, J. S. Gansler. *Democracy's Arsenal: Creating a Twenty-First-Century Defense Industry*. Cambridge, MA: MIT. 2011; R. Smith. *Military Economics: The Interaction of Power and Money*. London: Palgrave. 2009.

complex weapons system with allies may reduce its costs and increase interoperability, but it also presents challenges to the security of the supply chain (see [Chapter 14](#) for supplementary observations). For academics, the tensions have spawned considerable debate over whether the notion of national security of supply in advanced weapons has become a redundant concept, and normative questions about how states can or should balance sovereignty imperatives against counter-imperatives to offset affordability constraints by meeting their defence procurement needs through forms of international cooperation and government-induced transnational industrial restructuring.²

These difficult choices and trade-offs harry national governments even at the best of times when budget deficits are low and economies are flourishing. But they become particularly acute when public money is tight, and wider security environments are volatile and shifting. It is in this latter position that the UK government currently finds itself, following the decision on 23 June 2016, by the majority of UK voters to leave the European Union in an ‘in-out’ referendum. From a defence procurement perspective, the United Kingdom and European Union now both face unresolved questions about the impact of Brexit on Britain and the EU’s future defence procurement and defence industries. The United Kingdom has long preferred to emphasise sovereignty over integration in its defence procurement choices, where other EU Member States have historically advocated ever-closer European integration in defence production and supply, particularly supporting supranational initiatives with a view to creating a globally competitive and autonomous European Defence Technological and Industrial Base (EDTIB). In the Treaty on the Functioning of the European Union’ (TfEU [alternatively] hereinafter the Treaty), the European Union has

² See, for example, the contributions in R. Bitzinger, ed. *The Modern Defense Industry: Political, Economic, and Technological Issues*. Santa Barbara: Praeger. 2009.

ended up with a Treaty that supports both, on the one hand, seeking to preserve national sovereignty considerations while encouraging and driving increasingly integrated defence procurement.

In this chapter, we explore this great paradox through the prism of Brexit. In so doing, we attempt not only to provide a substantive update of our pre- and post-referendum analyses of the possible implications of Brexit for UK and EU defence procurement and industrial policies,³ but also to draw some of the wider implications of that analysis for (and towards) a political economic theory of defence procurement.

Our analysis here falls into four sections. The first section focuses on the current state of the Brexit negotiations, highlighting the UK and EU27 negotiation ‘red lines’ and what they might mean for future UK-EU trade arrangements. The second section analyses the pre-Brexit ‘rules of the game’ in terms of the current resolution of tensions between national sovereignty and supranational integration in EU defence procurement and industrial policy. In doing so, it identifies the current frictions between the United Kingdom’s commitment to EU internal market liberalisation and EU initiatives intended to develop a more integrated European defence industrial policy, which have intensified since the UK’s Brexit vote. The third section explores the potential benefits and costs for the United Kingdom and remaining twenty-seven EU Member States if the outcomes of Brexit negotiations result in a scenario where the UK secures a preferential ‘third country’ sector agreement as part of a wider FTA. This involves the least disruption to existing pre-Brexit arrangements, and avoids the most disruptive situation whereby the

³ M. Uttley and B. Wilkinson. ‘A Spin of the Wheel? Defence Procurement and Defence Industries in the Brexit Debates’. *International Affairs*. 2016. 92(4): 569–86; M. Uttley and B. Wilkinson. ‘Contingent Choices: the Future of United Kingdom Defence Procurement and Defence Industries in the Post-Brexit Era’. *Global Affairs*. 2017. 2(5): 491–502.

United Kingdom leaves the Single European Market (SEM) and is forced to operate under WTO rules. In doing so, the section identifies the potential benefits and costs for the United Kingdom and remaining EU Member States under each scenario. In the concluding section, we draw out the wider theoretical implications of the analysis, highlighting the deep, persistent tensions – the great paradox – that underpins defence procurement.

9.1 The State of Brexit Negotiations

Some two years on from the June 2016 in-out referendum, the British government and the remaining 27 EU Member States are locked in negotiations on the nature of their post-Brexit trading relationship.⁴ The British government – with relative consistency – says that the United Kingdom will leave the EU SEM and Customs Union, and that it will negotiate a bespoke free trade agreement (FTA) with Brussels that enables the most frictionless possible trade within the SEM in goods and services. Its negotiation red lines are to end the direct jurisdiction of the European Court of Justice (ECJ) and the freedom of movement of European Union citizens into the United Kingdom, together with a cessation of mandatory UK contributions to the EU budget.

In drawing up these red lines, Prime Minister Theresa May's administration has effectively closed down the 'Norway model' of third-country trading association with the European Union because it would require the United Kingdom to commit to a continuation of the ECJ's jurisdiction, free movement of people and continued British budget contributions to the EU in exchange for full SEM access. At the same time, Mrs

⁴ For an extended overview, see J. Owen, A. Stojanovic and J. Rutter. *Trade after Brexit: Options for the UK's Relationship with the EU*. London: Institute for Government. December 2017.

May has also rejected a Brexit modelled on the EU-Canada Comprehensive Economic and Trade Agreement (CETA). Although this would preserve British red lines, it would significantly diminish Britain's current SEM access through new tariff and non-tariff barriers. Instead, Mrs May's government has rejected the notion of a binary choice between the Norway and Canada models by arguing that the United Kingdom will be leaving the European Union from a 'unique starting point' of full regulatory conformity with the SEM, from which bespoke trading relations can be forged in key sectors of mutual significance to the UK and EU Member States. Its objective is therefore to secure a 'middle ground' FTA that would maximise UK access to the SEM while preserving its Brexit red lines.

Conversely, Michel Barnier, the European Union's chief Brexit negotiator, has responded by stating that the only option for the United Kingdom is the binary choice that it wishes to avoid:

If the UK wanted to go further than the type of free trade agreement we have signed with Canada, there are other models on the table. Norway and Iceland have chosen to be in the Single market, to accept the rules, and to contribute financially to cohesion policy. But one thing is sure: it is not – and will not – be possible for a third country to have the same benefits as the Norwegian model but the limited obligations of the Canadian model.⁵

These EU red lines reflect the political concern in Brussels and European capitals that 'if the UK is seen to get a good deal from negotiations there is a risk of moral hazard, with

⁵ European Commission. *Single Market scoreboard*. 2017. 4. http://ec.europa.eu/internal_market/scoreboard/docs/2017/transposition/2017-scoreboard_transposition_en.pdf (accessed 2 May 2018).

other member states questioning the link between membership in the Union and receipt of its benefits'.⁶ The European Union therefore has an incentive to 'punish' Britain in order to deter 'contagion, but also has an incentive to portray the UK as a spoiler, since this helps reinforce solidarity between the EU27 and distracts from genuine differences between the remaining member states'.⁷ This is reflected in Donald Tusk, the European Council President's rejection of any notion of UK "“cherry picking” aspects of its future relationship with the EU or being able to join a “single market a la carte” on a sector-by-sector approach in any post-Brexit deal.⁸

Not surprisingly, the Brexit negotiations have ground rapidly to a halt, and are currently at an impasse because Britain and the remaining EU27 member states have yet to resolve the dilemmas arising from these seemingly irreconcilable red lines. For the United Kingdom, if the EU27 prove unwilling to modify their position on SEM access then the UK will be confronted with a stark choice between accepting the limitations of a CETA model of third-party association, or a 'no deal' scenario where it is forced to trade with the European Union under World Trade Organisation (WTO) rules. Conversely, the remaining EU27 confront a tension between 'allowing Britain to “have its cake and eat it” ... and “cutting off its nose to spite its face” by denying Britain access to European frameworks', which would ultimately damage the Member States' national economies if no deal is reached.⁹

⁶ P. Martill and M. Sus. *Known Unknowns: EU Foreign, Security, and Defence Policy after Brexit*. London: LSE!deas. 26 January 2018. 11.

⁷ Martill and Sus. *Known Unknowns*. 9.

⁸ BBC News. 'Donald Tusk: UK Brexit plans “pure illusion”'. BBC News. 23 February 2018. www.bbc.co.uk/news/uk-politics-43175201 (accessed 2 May 2018).

⁹ Martill and Sus. *Known Unknowns*. 9.

As a consequence, the exact details of the final Brexit outcome remain a mystery, as well as its feasibility in practice, or what its implications are for the United Kingdom and the remaining twenty-seven EU Member States. While all this is true for numerous sectors and policy areas, the potential implications for the future of UK and EU defence procurement cooperation and defence industries are significant. This is because intra-EU armaments procurement and associated industries form a central component of the defence political economies of the EU Member States. Indeed, during the course of the Brexit process the UK government has emphasised its desire to secure a future defence relationship with the European Union ‘that is deeper than any current third country partnership ... [which] ... should be unprecedented in its breadth, taking in cooperation on foreign policy, defence and security, and development, and in the degree of engagement that we envisage’.¹⁰ It has explicitly identified the European defence industry as a sector that is ‘closely integrated with leading companies having a presence across several European nations ... [where] ... open markets and customs arrangements that are as frictionless as possible are important to the continued success of this sector and to ensure that British and European Armed Forces can access the best war-fighting capability to keep us safe’.¹¹

The United Kingdom’s ambitions in this area suggest it is seeking to draw on its ‘security surplus’ – derived from its national defence budget that accounts for approximately 27 per cent of the combined defence expenditure of the EU Member

¹⁰ HM Government. *Foreign Policy, Defence and Development: A Future Partnership*. 2017. 18. Available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643924/Foreign_policy_defence_and_development_paper.pdf (accessed 2 May 2018).

¹¹ HM Government. *Foreign Policy, Defence and Development*. 19.

States¹² – to strengthen its negotiating hand in Brexit talks. Such a security surplus is likely to involve using the promise of ongoing cooperation on defence measures to extract a bespoke deal from the European Union in the defence procurement and industrial sector, and, potentially, beyond. While the European Council has made clear its determination to secure a close partnership with the United Kingdom in areas including security, defence and foreign policy, its position remains that the depth of such a partnership will be limited if the UK is outside the Customs Union and SEM because this will ‘inevitably lead to frictions in trade’.¹³

Uncertainty therefore remains about the ramifications of Brexit for the United Kingdom and the European Union in these sectors. And yet understanding the implications will be crucial, not least because defence industries are important areas of the United Kingdom’s economy as well as vital parts of the country’s national security infrastructure. The United Kingdom’s defence industry has an turnover of £23 billion per annum, including defence exports worth £5.9 billion, which employs 142,000 predominantly highly skilled personnel.¹⁴ There remain crucial questions, too, about the post-Brexit future of pan-EU initiatives intended to achieve ‘ever closer union’ through internal market liberalisation, intra-EU armaments cooperation and aspirations to develop a European Defence Technological and Industrial Base to support the EU

¹² European Commission. Eurostat: How Much Is Spent on Defence in the EU?. European Commission. 17 June 2017. <http://ec.europa.eu/eurostat/web/products-eurostat-news/-/EDN-20170607-1> (accessed 11 May 2018).

¹³ European Council. European Council (Art 50) Guidelines. 23 March 2018. 2. www.consilium.europa.eu/media/33458/23-euco-art50-guidelines.pdf (accessed 2 May 2018).

¹⁴ Parliament UK. *House of Commons Exiting the European Union Committee – Defence Sector Report* 2017. 1. www.parliament.uk/documents/commons-committees/Exiting-the-European-Union/17-19/Sectoral%20Analyses/11-Defence-Report.pdf (accessed 2 May 2018).

Common Security and Defence Policy (CSDP). These questions are not straightforward and the answers are far from resolved.

9.2 The State of Pre-Brexit EU Defence Procurement Cooperation

In essence, the pre-Brexit rules of the game in EU defence procurement and industrial policy reflect a clash between the competing logics of the primacy of national sovereignty versus the counter-imperatives for closer European integration.¹⁵ The logic of sovereignty is enshrined in the pervasive idea that EU Member States should retain the right to autonomy in developing, producing, procuring and trading in military goods for national security reasons. It is this that is enshrined in Article 346 of the Treaty on the Functioning of the European Union (TfEU), which states that 'any Member State may take such measures as it considers necessary for the protection of the *essential interests of its security* which are connected with the production or trade in arms, munitions and war material' (italics added).¹⁶ The intention of this is clear: it seeks to ensure that member states retain national control over security of supply in meeting their defence materiel requirements, but defence procurement expenditure and domestic defence industries are also important for national employment and economy. Member States have used Article 346 provisions to justify greater domestic defence spending to protect the industries from external competition to sustain what is seen as

¹⁵ See Bátorá, 'European Defence Agency: a Flashpoint of Institutional Logics'. *West European Politics*. 2009. 32(6): 1093.

¹⁶ Treaty establishing the European Economic Community (TEEC). 1 January 1958.

a manufacturing sector of national strategic and economic importance.¹⁷ A consequence has been that while the European Union has succeeded in creating a single market for public procurement of civil goods and services, the application of Article 346 by Member States – motivated either by national security or domestic economic and industrial motives – has limited market liberalisation impact in the EU defence procurement sector.¹⁸

The logic of sovereignty sits in tension with the foundational EU logic of integration through ‘ever closer union’ and aspirations towards common defence that ‘have been part of the European project since its inception’.¹⁹ The integrationist logic holds that collective defence and the industry and armaments production to support it is a common endeavour among the EU states in the development of a credible Common Security and Defence Policy. It assumes that EU security policy should be developed within the framework of the CSDP through the pooling of defence research and development and weapons acquisition requirements among EU Member States. It also assumes that EU market liberalisation in defence procurement is essential to the development of a strategically autonomous European Defence Technological and Industrial Base. The rationale behind this logic is built on several studies that have sought to identify the ‘cost of non-Europe’ arising from what the European Commission describes as a ‘scattergun approach’ to defence procurement arising from duplication in weapons systems in production, and from existing gaps and protectionist barriers to a

¹⁷ I. Edwards. *The EU Defence and Security Procurement Directive: a Step Towards Affordability?* London: Chatham House. 2011. 4.

¹⁸ R. Bitzinger. The European Defense Industry in the 21st Century: Challenges and Responses. In Bitzinger, ed. *The Modern Defense Industry*. 175–95.

¹⁹ See European Commission. *Defending Europe: The Case for Greater EU Cooperation on Security and Defence*. https://ec.europa.eu/commission/sites/beta-political/files/defending-europe-factsheet_en.pdf (accessed 2 May 2018).

truly integrated and competitive EU single market in defence contracting arising from the use of Article 346 provisions by the Member States. Here, the latest European Parliament report mapping the 'cost of non-Europe' estimates these as ranging 'from some 130 billion Euro, at the high end, to at least 26 billion Euro per year, on a more cautious estimate'.²⁰ The report shows that 'the existence of 28 compartmentalised national markets ... hinders competition and results in a missed opportunity for economies of scale for industry and production' when compared to procurement and defence-industrial arrangements in the United States.²¹ This missed opportunity for economies of scale is evident in the current level of EU duplication in procurement and production whereby EU states have in use a total of seventy-nine different weapons platforms and systems, compared to twenty-one in the United States, and have in operation thirty-six major equipment production lines, compared to eleven in the United States.²² It is precisely this logic that has led the European Commission to attempt to reduce fragmentation and duplicative national defence programmes. In July 2009, the European Parliament and Council adopted the Defence and Security Directive (Directive 2009/81/EC) on defence procurement, which sought to liberalise EU markets and affirm the primacy of EU competition law by confining the use of Article 346 by member states to 'clearly exceptional cases' in an attempt to eradicate national protectionism on economic grounds.²³

²⁰ European Parliamentary Research Unit (EPRU). *Mapping the cost of non-Europe, 2014–19*. Brussels: European Parliament. April 2015. 21.

²¹ *ibid.*

²² V. Briani. *Armaments Duplication in Europe: a Quantitative Assessment*. Brussels: Centre for European Policy Studies. July 2013. 3.

²³ For an extended analysis, see M. Blauburger and M. Weiss. 'If You Can't Beat Me, Join Me! How the Commission Pushed and Pulled Member States into Legislating Defence Procurement'. *Journal of European Public Policy*. 2013. 20(8): 1120–38; F. Castellacci. A

Faced with these two competing logics, the United Kingdom's stance is simultaneously supportive of the liberalisation of EU and transatlantic defence equipment markets and of maintaining sovereignty over key areas of procurement. Indeed, this is reflected in the United Kingdom's own procurement and defence industrial strategy. The Ministry of Defence's 2017 paper entitled 'Industry for Defence and a Prosperous Britain' reflected the United Kingdom's continued commitment to pursue 'open procurement' by fulfilling its 'defence and security requirements through open competition on the domestic and global market'.²⁴ This commitment to open procurement via global markets is essentially Euro-Atlanticist and reflects the primacy of the NATO alliance in its national strategy. At the same time, UK sovereignty is ensured through the principle of 'technology advantage', whereby the MoD takes action on procurement decisions to protect 'operational advantage' (the national ability to maintain and upgrade its defence technology) and 'freedom of action' (the ability to operate defence systems free from external intervention) where this is considered essential for national security.

These principles are evident in the United Kingdom's alternative weapons acquisition strategies and defence industrial policy. In addition to national programmes (e.g. the Queen Elizabeth Class aircraft carriers), its weapons acquisition strategy

M. Fevolden and M. Lundmark. 'How are Defence Companies Responding to EU Defence and Security Market Liberalisation? A Comparative Study of Norway and Sweden'. *Journal of European Public Policy*. 2014, 21(8): 1218–35; C. Hoeffler. 'European Armaments Co-Operation and the Renewal of Industrial Policy Motives'. *Journal of European Public Policy*. 2012. 19(3): 435–51.

²⁴ Ministry of Defence. *Industry for Defence and a Prosperous Britain: Refreshing Defence Industrial Policy*. December 2017.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/669958/DefenceIndustrialPolicy_Web.pdf (accessed 2 May 2018).

embraces transatlantic collaborative ventures (F-35B), the manufacture within the domestic industry of US-designed systems (e.g. the Augusta-Westland Apache AH-1 attack helicopter) and off-the-shelf import of complete weapons systems from the United States (e.g. the Boeing P-8 Maritime Patrol Aircraft). Approximately 28 per cent of total MoD equipment expenditure is allocated to European collaborative weapons programmes with other EU Member States (e.g. Typhoon aircraft) through intergovernmental agreements such as the A400 M tactical and strategic airlift aircraft.²⁵ On the supply side, successive governments have claimed that the United Kingdom has 'one of the most open defence markets in the world'.²⁶ The 'British defence industry' is defined as 'all defence suppliers [to the MoD and export markets] that create value, employment, technology or intellectual assets in the UK', including 'both UK- and foreign-owned companies'.²⁷ Britain's 'logic of liberalisation of defence markets' has enabled major European and US defence firms to establish onshore operations, compete without discrimination for MoD contracts and export orders and develop local supply chains in the United Kingdom through forms of 'industrial engagement'.

The same approach plays out at the European level, where the United Kingdom is a vocal supporter of the liberalisation of EU defence markets, but a staunch opponent of further European Union and EDA integration initiatives that might dilute the legitimate application of Article 346. On the one hand, Britain's commitment to open procurement

²⁵ European Defence Agency. *National Defence Data 2013-2014 and 2015 (est.) of the 27 EDA Member States*. June 2016. [https://eda.europa.eu/docs/default-source/documents/eda-national-defence-data-2013-2014-\(2015-est\)5397973fa4d264cfa776ff000087ef0f.pdf](https://eda.europa.eu/docs/default-source/documents/eda-national-defence-data-2013-2014-(2015-est)5397973fa4d264cfa776ff000087ef0f.pdf) (accessed 11 May 2018).

²⁶ Ministry of Defence. *Defence Industrial Strategy*. The Stationery Office. Report number: Cm. 6697. 2005. 15.

²⁷ Ministry of Defence. *Defence Industrial Policy*. Ministry of Defence. Policy paper number: 5, 2002. p. 4.

and market liberalisation has been reflected in its support for the Defence and Security Directive. This was evident in the British government's review of the balance of competences between the United Kingdom and the European Union in July 2012, which sought to audit 'what the EU does, how it affects the UK, where competence lies, how the EU's competences are used, and what that means for the UK's national interest'.²⁸ The review reaffirmed the UK government's support for efforts to open up the EU defence market to more competition and eliminate economically driven 'buy national' policies, 'while respecting member states' right to maintain certain strategic industrial capabilities for reasons of national security'.²⁹ It also identifies that there is scope for the Commission to take a more proactive stance within its existing competence, notably preventing 'abuses' of Article 346 by those member states using it as a pretext to discriminate against non-national bidders for non-sensitive defence contracts.³⁰ On the other hand, the review concluded that the European Commission has progressively claimed 'more competences in this particular area' and 'sees an even broader role for

²⁸ HM Government. *Review of the balance of competences between the United Kingdom and the European Union*. The Stationary Office. Report number: Cm. 8415. 2012. 6.

²⁹ House of Commons Defence Committee. *Defence Acquisition: Government Response to the Committee's Seventh Report of Session 2012-2013*. The Stationery Office Ltd. Report number: HC 73. May 2013.
<https://publications.parliament.uk/pa/cm201314/cmselect/cmdfence/73/73.pdf> (accessed 2 May 2018). For an extended analysis, see House of Commons Library. *Leaving the EU*. House of Commons Library. Research Paper: 13/42. 1 July 2013. 85–90.
<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/RP13-42#fullreport> (accessed 2 May 2018).

³⁰ HM Government. *Review of the Balances of Competences between the United Kingdom and European Union, The Single Market: Free Movement of Services*. London: TSO. 2014. 42.

itself', and reaffirmed that the UK government 'does not support any extension of Commission competence'.³¹

These factors are significant when it comes to Brexit negotiations. On the one hand, as far as defence procurement and industrial strategy go, the UK government will prioritise gaining tariff- and barrier-free access to the increasingly integrated defence markets in the European Union, because it supports their desire for competitive markets, and because it is essential for UK-based defence firms to retain frictionless access to its European supply chains. Simultaneously, the United Kingdom will also want to retain the kind of sovereignty over defence procurement currently provided by Article 346 in its future defence trade relations with the EU Member States. Ultimately, the availability of such a position will be heavily dependent on internal factors in the European Union, and the desire of the remaining twenty-seven Member States to give the United Kingdom 'what it wants'. On the other hand, the European Union has responded to the Brexit vote by revisiting the balance of jurisdictions between the Member States and the European Commission and EDA. In 2013, prior to the United Kingdom's Brexit vote, the European Commission published the document entitled 'Towards a More Competitive and Efficient Defence and Security Sector', which outlined plans to allocate dedicated funding for defence-specific R&D programmes on behalf of the member states directly from the European Union's budget.³² Since then, the European Commission has launched a fully-fledged European Defence Fund plan worth €1.5 billion per year from the EU central budget to subsidise joint defence research and

³¹ *ibid.*

³² European Commission. *Towards a more competitive and efficient defence and security sector*. Commission staff working document. Brussels: European Commission. 24 July 2013. For an extended analysis, see D. Fiott. 'European Defence-Industrial Cooperation: from Keynes to Clausewitz'. *Global Affairs*. 2015. 1(2): 162.

development project proposals from groupings of member states. The purpose of this initiative is to increase the strategic autonomy and self-sufficiency of the EDTIB as part of the European Union's 2016 Global Strategy. As Nick Whitney, a former EDA Chief Executive, points out, 'the rules for the subsidy regime currently being debated in the EU institutions specify that the subsidy should be available only to EU defence industries'.³³ A critical issue for the UK government and Britain's onshore defence industry is whether or how access to this initiative should or could be obtained in the post-Brexit settlement that prevails.

9.3 Scenario 1: Post-Brexit Britain in the EU Single European Market

Prime Minister May's objectives are for the United Kingdom to leave the EU SEM and Customs Union, and to secure a bespoke FTA with Brussels that enables the most frictionless possible trade within the SEM. If the British government is successful, then the most favourable outcome is likely to be a bespoke variant of the Norwegian model of third-country association because it would provide the United Kingdom with the highest level of post-Brexit continuity through unrestricted access to the SEM, and, in return, it would be required to adopt the same future SEM-related legislation as EU Member States.³⁴ Nevertheless, it would also have the effect of recalibrating the contingent choices and potential trade-offs for Britain and the remaining twenty-seven

³³ N. Whitney. 'The Brexit Threat to Britain's Defence Industry'. *European Council on Foreign Relations*. 1 February 2018. www.ecfr.eu/article/commentary_the_brexit_threat_to_britains_defence_industry (accessed on 16 April 2018).

³⁴ European Parliament. Free trade agreements.

EU states as they develop new rules of the game in managing their mutual interdependence in the defence procurement and defence industrial arenas.

For the United Kingdom government, a post-Brexit relationship based on a bespoke variant of the Norwegian model is unlikely to affect the country's choices concerning foreseeable major defence procurement plans and commitments, nor the domestic legislative basis on which its defence procurement is based. In 2017, the MoD published its Defence Equipment Plan, which detailed the government's latest plans cumulatively to spend approximately £180 billion on new equipment and equipment support up to 2027.³⁵ A significant proportion of expenditure on major projects is already contractually committed.³⁶ A Brexit modelled on a bespoke variant of the Norwegian model would enable Britain to retain de facto Article 346 provisions, which would mean that it would not alter the MoD's current ability to select from domestic systems, European and US collaborative programmes, and off-the-shelf purchases when placing future orders funded from the currently uncommitted equipment budget. It is likely to incur limited disruption to existing foreign companies operating as part of Britain's onshore defence industrial because it provides firms with continuing access to EU-wide markets and supply chains. Similarly, if the United Kingdom were to secure a relationship based on the EEA model, then its domestic defence procurement regime 'would very likely remain the same, and continue to evolve as the EU regime does, including continuing to be influenced by the case law of the European Courts and the

³⁵ Ministry of Defence. *The Defence Equipment Plan 2017*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/677999/20180125-EP17_Final.pdf (accessed 2 May 2018).

³⁶ Approximately 72 per cent of the Equipment Plan was contractually committed in 2017/18, falling to 17 per cent at the end of the decade. See Ministry of Defence. *The Defence Equipment Plan 2017*. 10.

requirements of the EU treaty principles'.³⁷ In this regard, Directive 2009/81/EC, relating to the procurement of defence- and security-related goods and services, was transposed into UK law in 2011, so this Brexit settlement would require no modification to existing domestic procurement legislation.³⁸

Nevertheless, for the United Kingdom a Brexit relationship based on a variant of the SEM access provisions provided by the Norwegian model is likely to come at the cost of reduced influence over EU supranational defence procurement policy than it currently enjoys. Although the United Kingdom would be required to contribute to the common EU budget in return for access to the single market, it is likely to incur a 'democratic deficit' by losing formal influence in shaping the direction and rules governing Europe's evolving defence internal market. It is noteworthy that the European Union has been unambiguous about the status of Norway and other EEA European Free Trade Association countries:

[their] position outside the EU was chosen by them rather than imposed by the EU, so any 'democratic deficit' resulting from their obligation to adopt EU law, despite not having a voice in EU decision-making, can be seen as the 'price' they have chosen to pay for retaining full access to the Single Market, while shunning EU membership.³⁹

³⁷ V. Moorcroft. 'Brexit: the end of public procurement rules or business as usual?' *Bird & Bird*. 9 August 2016. www.twobirds.com/en/news/articles/2016/uk/brexit-end-of-public-procurement-rules (accessed 2 May 2018).

³⁸ House of Commons Library. *EC Defence Equipment Directives*. Parliament UK, 2011. <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN04640> (accessed 2 May 2018).

³⁹ European Parliament. *Free trade agreements between EFTA and third countries: An overview*. 2016. [www.europarl.europa.eu/RegData/etudes/BRIE/2016/580918/EPRS_BRI\(2016\)580918_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/580918/EPRS_BRI(2016)580918_EN.pdf) (accessed 2 May 2018).

This situation would inevitably constrain Britain's future choices and present new risks when it ceases to be an EU Member State. First, the United Kingdom's new status 'outside the core EU political and economic circle' would result in reduced influence over the future evolution of EU defence procurement directives. Second, the European Commission's insistence that only EU Member States will benefit from European Defence Fund support effectively precludes third-country participation, which suggests that UK participation would be excluded. Even if the United Kingdom were to secure an association agreement of some kind, precedent suggests that it will be unlikely to have the same rights in the process of priority setting for the dispersal of future EU funding because of its 'third country' status. In effect, the United Kingdom would cede considerable influence over the content and direction of European Commission and EDA plans with their associated goals and aspirations to foster a more integrated and potentially more protectionist EU-wide defence industrial policy. Third, a chief UK government concern about defence procurement is that the remaining twenty-seven EU states should not be seen to be discriminating against US suppliers and that the UK freedom to buy equipment from the United States should not be qualified. Reduced British influence arising from its democratic deficit – coupled with the explicit European protectionism evident in the European Defence Fund construct – increases the potential risk of both eventualities materialising.

On the face of it, the post-Brexit deficit in the United Kingdom's influence and choices under an EEA Agreement scenario might be reflected in increased options for the remaining twenty-seven EU states to increase the tempo and extent of 'Europeanisation' of EU defence procurement and defence markets. Paradoxically, however, with this Brexit scenario there would be a shift in the balance of power and

influence from those EU Member States seeking more liberalisation of EU defence markets, including Britain and Sweden, towards other member states, notably France and Spain, which believe that the EDTIB should shield states from non-EU competition while helping to promote a 'buy European' policy.⁴⁰ That is to say, with reduced UK influence, it is questionable whether other major weapons-producing EU Member States 'would continue to push for competition and efficiency in the defence industry'.⁴¹

The potential barriers to European Commission attempts to intensify intra-EU market liberalisation in a situation of reduced UK influence are shown in statistics on the implications of initiatives to date. The latest EDA estimates indicate that despite the pan-EU adoption of Directive 2009/81/EC, approximately 80 per cent of EU defence expenditure not assigned to international collaborative weapons projects is spent nationally, indicating that the degree of openness to suppliers from other member states has been 'relatively low'.⁴² A recent study for the European Parliament on the impact of Directive 2009/81/EC demonstrated that its impact on pan-EU tendering for defence contracts has been limited.⁴³ Since the Directive came into force all of the major equipment contracts issued by the EU Member States have been awarded using Article

⁴⁰ D. Fiott. 'European Defence-Industrial Cooperation'.

⁴¹ I. Bond, S. Besch, A. Gostynska-Jakubowska, R. Korteweg, C. Mortera-Martinez and S. Tilford. 'Europe after Brexit: Unleashed or Undone?' Centre for European Reform. 2016. 10. www.cer.org.uk/sites/default/files/pb_euafterBrexit_15april16.pdf (accessed 2 May 2018).

⁴² European Commission. Towards a more competitive and efficient defence and security sector – memorandum. European Commission. 2013. [http://europa.eu/rapid/press-release MEMO-13-722_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-13-722_en.htm?locale=en) (accessed 2 May 2018).

⁴³ H. Masson, K. Martin and Y. Queau. The impact of the 'defence package' Directives on European defence. European Parliament. 2015. [www.europarl.europa.eu/RegData/etudes/STUD/2015/549044/EXPO_STU\(2015\)549044_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/549044/EXPO_STU(2015)549044_EN.pdf) (accessed 3 May 2018).

346 provisions, and where pan-EU tendering has been adopted by the Member States it has been for contracts 'dealing with services, the acquisition of equipment deemed to be of low value, and sub-systems'.⁴⁴ More recent reports suggest that the 2009 Directive has been mostly ignored by member states, and that 'most European countries have acknowledged the directive selectively, continuing to favour domestic industries'.⁴⁵ Consequently, rather than permitting the EDTIB and CSDP to advance unhindered, this form of Brexit 'might reveal deep cleavages in approach that have allowed other member states to hide behind Britain's blanket veto'.⁴⁶

9.4 Scenario 2: the UK Operates under World Trade Organisation Arrangements

The Brexit negotiations are currently at an impasse because Britain and the remaining EU27 Member States have yet to resolve the dilemmas arising from their seemingly irreconcilable red lines' This raises the real possibility that the outcome of the negotiation process will be a 'no-deal'. If this were the case, the most likely Brexit scenario – and, in our analysis, most disruptive to the existing rules of the game that govern EU defence procurement and industrial policy – is one where the United Kingdom fails to secure an FTA and trades with the European Union under WTO rules. If the FTA negotiations fall through, the United Kingdom will at least temporarily be forced to operate outside EU rules, regulations and directives by following WTO

⁴⁴ Masson, Martin and Queau. The impact of the 'defence package'. 6.

⁴⁵ See for example, T. Kington. 'EU sharply reminds members of open markets policy'. *Defense News*. 6 March 2016. www.defensenews.com/story/defense/policy-budget/industry/2016/03/06/eu-sharply-reminds-members-open-markets-policy/81217200/ (accessed 3 May 2018).

⁴⁶ Bond et al. Europe after Brexit. 10.

regulations. For some, the ramifications of such a move on defence industrial policy in the United Kingdom and European Union are likely to be limited. As one analyst puts it, the European Union

currently has little impact on UK defence policy, which tends to be more open to competition than is required by EU directives. Consequently, leaving the EU would have little impact on UK defence procurement. Of greater importance is wider European Defence co-operation, which the UK could still play a significant part in outside the EU given its largely intergovernmental nature.⁴⁷

In this analysis, a Brexit based on WTO arrangements might be expected to have a limited impact on the United Kingdom's major defence procurement plans and commitments where contracts are in place, or its future ability to engage in cooperative intergovernmental defence procurement initiatives with the United States and EU members. Similarly, the major markets for UK defence exports are outside the European Union: some 4 per cent of UK defence industry turnover is accounted for by EU sales, with the remainder going to domestic sales (58 per cent) and non-EU export destinations (38 per cent).⁴⁸ This suggests that any dislocation if the United Kingdom were to operate under WTO rules would be limited in terms of national defence trade.

A key consideration is whether future UK governments will seek to increase intergovernmental defence procurement with the EU Member States to compensate for

⁴⁷ F. Bungay. *Defence Policy and Procurement*. London: Trade Policy Research Centre. 2012. 18.

⁴⁸ L. Béraud-Sudreau. The extra-EU defence exports' effects on European armaments cooperation. European Parliament Directorate-General for External Policies. 2015. 18. [www.europarl.europa.eu/RegData/etudes/STUD/2015/549043/EXPO_STU\(2015\)549043_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/549043/EXPO_STU(2015)549043_EN.pdf) (accessed 3 May 2018).

its departure from EU institutions, or whether the Brexit vote will lead to a further disassociation from European ties. The combination of President Trump's recent call for the European NATO states to shoulder a greater burden for their own defence (see [Chapter 10](#)) and growing concerns over Russia's military activities on the alliance's eastern flanks (see [Chapter 17](#)) would make this latter course difficult. Moreover, recent post-referendum events, including the United Kingdom's recent commitment to the next phase of the collaborative Anglo-French Maritime Mine Counter Measures (MMCM) project, signals that bilateral and multilateral cooperation with EU states is likely to remain a cornerstone of UK procurement.

Nevertheless, a Brexit predicated on WTO arrangements would provide the United Kingdom with new choices to mould a more independent national procurement and defence industrial policy. Britain would have choices over whether to retain or dispense with some or all its existing defence procurement legislation currently derived from EU directives, and decisions of the European Court and EU case law would no longer be binding on the British courts (Moorcroft, 2016).⁴⁹ This raises the potential for more variance in UK defence procurement rules and policies as governments change. It would, for example, allow UK governments to adopt defence procurement and industrial strategies that factor economic and employment implications into weapons acquisition choices, which is currently prohibited in UK procurement law derived from Directive 2009/81/EC. This option is unlikely to be pursued by the current Conservative administration, which recently reaffirmed its commitment to a 'default' principle of 'open procurement'.⁵⁰ It could accommodate the aspiration of the

⁴⁹ Moorcroft. 'Brexit: the end of public procurement'.

⁵⁰ Ministry of Defence. *Industry for Defence and a Prosperous Britain: Refreshing Defence Industrial Policy*. December 2017. 10-11.

opposition Labour party to 'reverse this trend with a new Defence Industrial Strategy which, while accepting the importance of value for money, aims also to safeguard Britain's industrial base, secure high quality jobs throughout the supply chain, and protect our national sovereignty' if it were to be elected in a future general election.⁵¹

Correspondingly, a Brexit based on WTO arrangements would certainly have adverse effects for future UK government defence procurement options because of the responses of foreign defence firms with a presence in the UK to the new realities of operating outside the EU SEM. The UK-based defence industry made no secret of its antipathy towards a Brexit in the run-up to Britain's in-out referendum. The 2015 (in full) ADS survey report, entitled 'The UK aerospace, defence, security and space industry and the EU', found that 73 per cent of UK-based firms believe that EU membership is positive for their business against 1 per cent which said it was negative, and that 86 per cent of ADS members would vote for the United Kingdom to stay in the European Union against 2 per cent who would vote to leave.⁵² Significant areas of concern identified by industry respondents were that a Brexit might jeopardise the opportunities for free trade with the remaining EU Member States, impede their access to EU suppliers and supply chains and undermine their ability to recruit skilled workers if the free movement of EU labour is curtailed.⁵³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/669958/DefenceIndustrialPolicy_Web.pdf (accessed 2 May 2018).

⁵¹ H. Pemberton. 'Britain's defence and security priorities'. Bristol University. 2016.

[https://research-information.bristol.ac.uk/files/129207514/Submission to Labour on Trident April 2016.pdf](https://research-information.bristol.ac.uk/files/129207514/Submission_to_Labour_on_Trident_April_2016.pdf) (accessed 2 May 2018).

⁵² ADS. *The UK Aerospace, Defence, Security and Space Industry and the EU: an Assessment of the Interaction of the UK's Aerospace, Defence, Security and Space Industry with the European Union*. Farnborough: ADS. 2015. 11.

⁵³ ADS. *The UK aerospace, defence, security and space industry and the EU*. 14.

These concerns remain, and domestic and non-European defence firms with an established presence in the United Kingdom stand to lose out if Brexit results in a WTO arrangement in terms of reduced access to EU funds and the potential for increases in taxes and administrative burdens in trading with the remaining twenty-seven Member States. A particular concern is the future investment behaviour of the larger defence companies with operations in the United Kingdom that are headquartered in Europe, particularly Leonardo, Airbus Group and Thales UK, and investments by large US firms, notably Northrop Grumman Europe, which is based in the UK.⁵⁴ The risk for the UK government here is that a Brexit settlement based on WTO rules might lead these key industrial players to relocate within EU Member States to maintain access to the benefits of the SEM and EU-wide supply chains.⁵⁵

For the remaining twenty-seven EU Member States, a Brexit modelled on WTO arrangements offers similar choices and constraints to a Brexit modelled on a bespoke variant of the Norwegian model of third country association. Britain's status outside the EU internal market would offer opportunities for the remaining twenty-seven EU states to pursue greater liberalisation and Europeanisation of EU defence procurement and defence markets. At the same time, the achievement of these goals might be impeded by the loss of a British voice and influence in advocating market liberalisation. A primary difference arising from a Brexit modelled on WTO arrangements is that this would inevitably fragment the closeness of the European Union's defence industrial links with

⁵⁴ Uttley and Wilkinson. 'A Spin of the Wheel?' 581.

⁵⁵ See A. Black. 'European Defence Procurement and the Emerging EU Defence Presence'. The Federal Trust for Education and Research. 2016. 14.
http://fedtrust.co.uk/wp-content/uploads/2016/06/European_Defence_Procurement.pdf (accessed 2 May 2018).

of Europe's most capable military powers that currently accounts for approximately 21 per cent of the EU defence budget.⁵⁶ A key question for EU policymakers would be over the extent to which the EDTIB initiative could progress with Britain's absence. The European Union will also lose its close ties to one of the few countries that meet the 'gold standard' by spending 2 per cent of GDP on defence. As President Trump questions the utility of NATO, this may be poor timing.

9.5 Conclusion: the Great Paradox

The British government's stated objectives in the ongoing Brexit negotiations are to leave the EU Single Market and Customs Union, and to negotiate a bespoke free trade agreement with Brussels that enables the most frictionless possible trade within the SEM in goods and services. For their part, the EU27 have an incentive to punish Britain in order to deter contagion and any further fragmentation of the Union. However, the future remains deeply uncertain. Although Prime Minister May has clearly stated a negotiating position, she may well be forced to adopt a new position if the European Union refuses to offer satisfactory terms in an FTA. In this sense, the United Kingdom's options are contingent on the choices and trade-offs of twenty-seven EU Member States. It may be that the United Kingdom is able to secure a FTA arrangement that provides bespoke third-country access to the SEM. This will be the least disruptive scenario for the United Kingdom's defence procurement and industrial strategy, but it would incur inevitable costs in terms of reduced influence and potential barriers to industrial participation. In the longer-term, however, benefits of such an FTA may be little more than a mirage; if the EU27 continues to pursue further EDTIB integration, ultimately the

⁵⁶ Bond et al. *Europe after Brexit*. 10.

current scope and utility of Article 346 will be called into question. In this case, the United Kingdom, as an 'associate' member of the European Union, would be bound to follow whatever new directives were passed and would not be able to bargain for similar provisions. Correspondingly, a Brexit based on WTO arrangements provides a veneer of greater British sovereignty over defence procurement but risks the flight of key sections of the domestic industry to the European Union, and calls into question the future viability of the notion of an EDTIB.

Thus, each of the scenarios considered comes with benefits for the UK and for the EU, but each equally is likely to come at a cost. In short, British aspirations to secure an advantageous FTA which carries all the benefits of membership of the SEM without any of the trade-offs over free movement or tariffs seems to be little more than an ideal vision of the future; indeed, the future of UK defence procurement and industrial strategy, is likely to rest on the choices made, not by the UK government, but by its negotiating partners. For the EU27, the credibility of the EDTIB concept will inevitably be more diluted the more that it keeps the United Kingdom at arms-length. The issue for the EU27, therefore, remains one of resolving the tension between letting the UK 'have its cake and eat it' and 'cutting off its nose to spite its face'.

Nevertheless, the overriding conclusion that emerges is that defence procurement in the Brexit negotiations has reverted to the norm. Both scenarios see not just an interplay between the logic of sovereignty and the logic of integration, but a deep, unresolvable tension. It is this tension that necessitates and complicates the trade-offs and choices of the negotiating parties; indeed, it is this tension that also creates the great paradox: the contending logics of national sovereignty and of integration. It also suggests that the integrationist approach, though strongly advocated

by the European Union, has gained less traction and less support in practice across the member states. The 'rules of the game' in EU defence procurement are skewed in favour of the logic of sovereignty, bolstered through the provisions of Article 346, and intergovernmental cooperation rather than through supranational EU bodies and initiatives. It is too early to say what this means for the future of EU-wide defence procurement, though it may well indicate that the impact of Brexit on defence procurement will be limited. More broadly, however, it suggests that when push comes to shove, nations will seek to protect the sovereignty of their supply chains over the economic benefits of supranational cooperation.